

**DEPARTMENT OF JUSTICE**  
**HB 298: To Extend the Existing Appropriation for Montana's**  
**Natural Resource Damage Program**

**Lawsuit and Settlement History**

In 1983, the State of Montana filed a lawsuit against the Atlantic Richfield Co. (ARCO) for injuries to the natural resources in the Clark Fork River Basin. The lawsuit, brought under federal and state Superfund laws, sought damages from ARCO, contending that decades of mining and smelting in the Butte and Anaconda areas had greatly harmed natural resources in the basin and deprived Montanans of their use.

The first phase of the lawsuit went to trial in March 1997. The Court approved a partial settlement covering a substantial portion of the State's claims in April 1999. The settlement called for ARCO to pay to the State a total of \$215 million plus interest from April 1998. Under the settlement terms, ARCO paid:

- \$129 million (including \$9 million in interest) that was used to create a special revenue fund known as the Upper Clark Fork River Basin Restoration Fund;
- \$86 million (including \$6 million in interest) to clean up the Silver Bow Creek area west and north of Butte; and
- \$15 million to reimburse the State for all of its costs in bringing the lawsuit through 1997. This was used to repay – with accumulated interest – the State's coal tax trust fund and the general fund.

The State also retained its NRD claim against the NorthWestern Energy Corporation for the Milltown Dam and Reservoir, which was resolved in 2005 on terms favorable to the State.

**Natural Resource Damages Program (NRDP)**

The Program has eight FTEs and two components:

- **Litigation** – Since 1990, NRDP has been responsible for continuing to pursue the ARCO lawsuit and settlement, and other NRD claims. This is funded from legislatively appropriated sources.
- **Restoration** – In addition, the Program is responsible for performing the necessary natural resource damage assessments, administering the restoration grants process, overseeing the Restoration Fund and making recommendations to the Governor on how to spend the damages. These functions are funded completely off-budget from the Restoration Fund.

**Restoration Grants**

Over the past seven years, the NRD Program has evaluated many proposed restoration projects. Based on its evaluations, the governor has approved \$54.3 million from the Restoration Fund for 63 projects in the Clark Fork Basin, including \$11.5 million for the Milltown Dam and Reservoir restoration.

For example, restoration grants have provided funding for:

- \$8.1 million to Butte-Silver Bow to replace 102,000 feet of leaking waterline in Butte;

- \$9.8 million to the Greenway Service District to develop a recreational trail corridor and restore aquatic and riparian resources along eight miles of Silver Bow Creek downstream from Butte;
- \$6.7 million to Anaconda-Deer Lodge City-County to replace 35,845 feet of leaking waterlines in Anaconda and to install 2,150 feet of new waterline at Bowman airport;
- \$544,751 to the Watershed Restoration Coalition to design and implement agricultural best management practices on 55,000 acres of rangeland on the east side of the Deer Lodge Valley.

### **Remaining Legal Issues**

Under the settlement, the State retains its restoration damage claims against ARCO for three sites:

- the Clark Fork River between Warm Springs Ponds and Milltown Dam;
- the alluvial groundwater aquifer and Silver Bow creek in the city of Butte, and
- the upland mountains surrounding the city of Anaconda.

The total value of these claims is estimated at about \$175 million. The parties are now involved in negotiations to settle the State's claims for these sites. NRDP expects a settlement in 2007, but if for some reason a settlement is not reached, the State could go to trial on its claims in 2008.

NRDP is also assessing the State's claims at a number of other sites, including:

- at and around Mike Horse Dam along the upper Blackfoot River, and
- at the East Helena Superfund site (the former ASARCO smelter).

### **Request to Extend Existing Loan Authority**

The 2003 Legislature provided a \$650,000 line of credit from the Coal Severance Tax Trust Fund to pay NRDP's costs for the 2005 biennium. Subsequently, the 2005 Legislature re-appropriated the remainder of the loan and extended this authorization through June 30, 2007. NRDP has expended less than \$250,000 of the original \$650,000 loan through January 1, 2007.

HB 298 would further extend this authorization and allow the program to operate on the remaining portion of the 2003 appropriation through the 2009 biennium.

**HB 298 does not extend any new credit.** It would simply:

- extend the 2003 appropriation to continue NRD litigation and settlement negotiations through the biennium ending June 30, 2009, and
- ensure that, to the extent allowed by state and federal law, any funds recovered for litigation costs are used to repay, with interest, the loan from the Coal Severance Tax Permanent Fund.

A three-fourths vote of each house of the legislature is required to approve the extension of the prior loan from the Coal Tax Severance Permanent Fund for another two years.